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NTSB Order No. EA-3563

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D. C.
on the 30th day of April, 1992

BARRY LAMBERT HARRIS,
Acting Administrator,
Federal Aviation Administration,

Complainant,

v.

David Wayne Baughman,

Respondent.

Docket SE-9516

OPINION AND ORDER

The Administrator has appealed from the oral initial decision of Administrative Law Judge William E. Fowler, Jr. issued on November 21, 1989, following an evidentiary hearing.¹ We grant the appeal, reverse the initial decision, and reinstate the Administrator's order.

Respondent is charged with violations of § 91.75(a) and 91.9 of the Federal Aviation Regulations ("FAR," 14 C.F.R.),² in

¹The initial decision, an excerpt from the hearing transcript, is attached.

²§ 91.75(a) (now 91.123) provided, as pertinent:

(a) When an ATC [air traffic control] clearance has been
(continued...)

connection with an (admitted) altitude deviation.³ Respondent was the non-flying, pilot-in-command ("PIC") of a US Air passenger-carrying flight between Orlando, FL and Philadelphia, PA. In the vicinity of Salisbury, MD, and at approximately 33,000 feet, the aircraft received ATC instructions to descend to 17,000 feet and hold. The aircraft descended to 15,400 feet before the deviation was discovered.⁴

Respondent contended that the deviation was caused by a malfunctioning autopilot, and the Administrator concedes that this equipment probably did malfunction. Appeal at p. 3.⁵ According to respondent, because it was reasonable for him to rely on the autopilot working properly and because he had other

²(...continued)

obtained, no pilot in command may deviate from that clearance, except in an emergency, unless an amended clearance is obtained.

[There is no allegation in this case that an emergency existed.]

§ 91.9 (now 91.13) provided:

No person may operate an aircraft in a careless or reckless manner so as to endanger the life or property of another.

³No sanction was imposed, as respondent filed a report under the Aviation Safety Reporting Program.

⁴It was discovered when respondent contacted ATC for information about separation of a nearby aircraft and ATC responded questioning the aircraft's altitude.

⁵Respondent offered considerable un rebutted evidence that autopilots installed in these particular aircraft had the potential to reset themselves. That is, even though they were set to reach and maintain a certain altitude, they could, by themselves, reset at another altitude. The changed altitude would be visible on the monitor, but no alarm would be set off.

duties during the relevant time period, he should not be faulted for the deviation.

The law judge accepted this argument, declining to find a violation of 91.75(a). He found the relevant standard to be that of a prudent pilot, and concluded that respondent had exercised a high degree of care at all times and done all that he could do. Tr. at pps. 219-20. The law judge further found that respondent did not violate § 91.9, having acted "with prudence and responsibility." Id. at 222.⁶

The Administrator's appeal challenges the law judge's finding that respondent acted with all reasonable care.⁷ The Administrator notes that respondent, as PIC, is responsible for overall safety (which includes flying at the proper altitude, see Tr. at p. 19). More importantly, he focuses on the fact that other equipment available to him to avoid the deviation (i.e., the aircraft's altimeters) was ignored. According to the Administrator's expert witness, the pilot must constantly back up

⁶There is a factual error in the initial decision. At page 219, the law judge states that, after the deviation, the aircraft was directed by ATC to maintain 17,000 feet. In fact, the aircraft was directed to maintain 15,000 feet.

⁷We agree with respondent that he is held to the standard of the highest degree of care by a reasonable and prudent pilot. We do not think the Administrator contends differently. We do not, however, agree that cases such as Administrator v. Coleman, 1 NTSB 229 (1968) and Administrator v. Leenerts, NTSB Order EA-2845 (1988), which discuss the principle of reasonable reliance on another's performance, are applicable to reliance on equipment. The issue here, instead, is whether respondent satisfied his duties as a reasonable and prudent pilot exercising the highest degree of care in relying on the autopilot to take the aircraft to 17,000 feet, rather than cross-checking, using both the autopilot and the altimeter, to confirm proper altitude.

the autopilot equipment. Tr. at p. 54.⁸ On the facts of this case, we must agree with this assessment.

Initially, we reject respondent's suggestion that his other duties (including his "see and avoid" obligation) were such that he should not have been required also to cross-check the autopilot against the altimeter. Not only is the underlying contention -- that he was especially busy with other duties at the time -- not proven in the record, we find it difficult to accept the proposition that a pilot exercising due care would not have noticed soon after his 18,000-foot altimeter call that the aircraft had not begun to level out for holding at the specified 17,000 feet. Furthermore, the aircraft continued to descend from 18,000 feet for more than twice the time it would have taken to reach 17,000 feet.

This is not a case where the deviation was minor. We have found that a non-flying PIC is responsible for continuous monitoring of the instruments that would have revealed the error before the deviation was 700 feet. Administrator v. Gentile, NTSB Order EA-2671 (1988). Not only was there a deviation of approximately 1,600 feet, it took ATC to identify the problem. That respondent was also performing important "see and avoid" functions does not excuse his failure here; the two are not mutually exclusive. Accord Gentile, supra.

⁸This witness testified to a similar autopilot failure while he was in an aircraft, but noted that in that instance the crew immediately returned to the proper altitude because they continuously checked their altitude and caught the malfunction. Id. at 38.

As confirmed by a US Air witness, exclusive reliance on the autopilot is not appropriate, as it (as well as any system) could malfunction. And, if the autopilot breakdown occurred after the 18,000-foot check, and when the aircraft was only 1,000 feet from its cleared level, failure to check the altimeter appears even more unreasonable. The closer the aircraft comes to the prescribed altitude, the more careful a prudent pilot would be to avoid a deviation.

We cannot, in these circumstances, find that respondent either acted reasonably or demonstrated the highest degree of care required of him as PIC.⁹ Based on the above analysis, we must also find that respondent violated § 91.9. As discussed, we cannot agree with the law judge that respondent took all actions a reasonable pilot would have taken. Finally, we note that, whether the FAA had acted at the time to address the problem is immaterial to whether respondent is charged with violating or found to have violated the cited regulations.

⁹We find irrelevant respondent's citations to the principle that credibility findings by law judges are reluctantly disturbed. We see no credibility issue here, especially since the Administrator has conceded the likely failure of the autopilot.

ACCORDINGLY, IT IS ORDERED THAT:

1. The Administrator's appeal is granted; and
2. The initial decision is reversed.

COUGHLIN, Acting Chairman, LAUBER, KOLSTAD, HART, and HAMMERSCHMIDT, Members of the Board, concurred in the above opinion and order.